

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

VERSATA SOFTWARE, INC. f/k/a  
TRILOGY SOFTWARE, INC.,  
VERSATA DEVELOPMENT GROUP,  
INC., and TRILOGY, INC.,

Plaintiffs,

v.

FORD MOTOR COMPANY,

Defendant.

Case No. 15-10628-MFL-EAS  
(Consolidated with Case No. 15-cv-  
11624)

Hon. Matthew F. Leitman

JURY TRIAL DEMANDED

**Telephonic Hearing Requested**

**VERSATA'S MOTION FOR  
A STATUS HEARING AND  
FOR THE ENTRY OF A SCHEDULING ORDER**

**CONCISE STATEMENT OF ISSUES PRESENTED**

1. Should the Court schedule a status hearing in this case for the parties to resolve their scheduling issues?

**Versata answers: Yes.**

2. Should the Court enter a pre-trial scheduling order, which will allow the parties to finish work necessary to maintain the October 6, 2020 trial date?

**Versata answers: Yes.**

Versata Software, Inc., f/k/a Trilogy Software, Inc., Versata Development Group, Inc., and Trilogy, Inc. (“Versata”) respectfully move the Court to (1) schedule a status hearing in this case for the parties to resolve certain scheduling issues and (2) enter a scheduling order for the parties to complete the limited pretrial work that remains before the October 6, 2020 trial date.<sup>1</sup>

Ford’s response to Versata’s expert analysis on the apportionment of damages, and Versata’s rebuttal to this response, are pending. Any other pretrial tasks need not take place until late summer or early fall. Ford has objected to any expert deadlines that would fall earlier than 60 days after the Governor of Michigan lifts Michigan’s shutdown order, which could jeopardize the Court’s trial date. While Versata is cognizant of the difficulties that have arisen as a result of COVID-19, and has no intention of asking Ford, its counsel or the Court to undertake any undue hardship, Ford’s position is not reasonable, and jeopardizes the Court’s trial setting in a case that has been pending for more than five years.

Ford will suffer no prejudice by the deadlines proposed in this scheduling order. Versata submitted its revised damages reports in October 2018, including the damages apportionment analysis of Seth Krauss. While the Court initially excluded Krauss’s apportionment opinions, the Court issued a second *Daubert* order on

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<sup>1</sup> Pursuant to Local Rule 7.1, the parties have conferred on this issue and have been unable to reach agreement on a proposed schedule, as discussed herein.

January 22, 2020 permitting Versata to present Krauss's apportionment analysis at trial. (D.I. 724.) Ford has thus had at least since January 22, 2020 to prepare its response to Krauss's report. It is not unreasonable to expect that Ford and its litigation team were working on their response at least since receiving the Court's *Daubert* order more than three months ago (which is about two months before nationwide stay-at-home orders were implemented).

Moreover, Ford has deposed Krauss multiple times, and has also deposed Versata's damages experts on Krauss's apportionment opinions. As a result, Ford has no need to conduct further depositions of experts. If Versata chooses to depose Ford's responsive experts, Versata is willing and able to do so by videoconference, or defer the depositions until it is safe to travel. The only prejudice from delaying these depositions is to Versata, not Ford.

Versata is conscious of the ongoing disruption caused by COVID-19, especially in Southeastern Michigan. Versata understands that most law firms and companies are making necessary adjustments and working remotely during this time. Ford, Versata, and their law firms are utilizing work-from-home protocols that allow many employees to continue working productively. And the apportionment analysis required to respond to Krauss's expert report requires largely intellectual and analytical work, quintessentially the type of work that people can perform in a work-from-home setting.

Furthermore, with video- and tele-conferencing tools, Ford still has the ability to collaborate regarding any issues that remain with expert discovery. There is no reason the stay-at-home order prevents Ford from performing the legal work necessary to complete the expert reports at issue.<sup>2</sup>

Versata has recognized the unique disruption caused by COVID-19 by proposing a long extension—until June 15, 2020—for Ford to respond. This deadline gives Ford almost five months since the Court issued its *Daubert* order to prepare its analysis. Versata believes this provides Ford with ample time to adequately prepare for and finalize its response, even after accounting for all necessary COVID-19-related work and family adjustments.

This litigation is five years old, and Versata respectfully submits that the open-ended deadlines proposed by Ford do not serve justice, even taking into account the difficult conditions the parties now face. Versata thus respectfully requests that the Court (1) schedule a status hearing in this case for the parties to resolve these scheduling issues, and (2) enter the attached proposed pretrial scheduling order that will allow the parties to finish the work necessary to maintain the October 6, 2020 trial setting.

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<sup>2</sup> Indeed, Krauss (who resides in Austin, Texas) developed his apportionment analysis almost entirely remotely before the entry of any stay-at-home order, working with counsel and experts in other locations using widely-available telephone and video conferencing tools.

Dated: May 8, 2020

Respectfully submitted,

/s/ Dan K. Webb

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2020, Versata's Motion for a Status Hearing and Entry of a Scheduling Order was served upon all counsel of record via electronic filing.

/s/ Dan K. Webb

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